Judicial-DHS Workgroup Minutes

August 2, 2012
10:00 am to 3:00 pm
State Capitol Room 103
Des Moines, Iowa

MINUTES

Attendance

Workgroup Members: Dr. Bhasker Dave, Dan Royer, Diane Brecht, Gretchen Kraemer, Jane Hudson, Judicial Magistrate Jay Stein, Jerry Mays, John Baldwin, Kathy Butler, Kathy Stone, Kelly Yeggy, Kim Wilson, Linda Brundies, Mary Ann Gibson, Neil Fagan, Ron Berg, Steve Hoffman, District Court Judge Terry Rickers, and Tom Eachus

Co-Chairs: David Boyd and Karalyn Kuhns

Facilitator: Donna Richard-Langer, Iowa Department of Human Services

DHS Staff: Karen Hyatt, Joanna Schroeder, Theresa Armstrong

Other Attendees:

Bill Freeland	House Democratic Caucus Staff
DeAnn Decker	Iowa Department of Public Health
Jeanette Minor	NAMI of Greater Des Moines
Jess Benson	LSA
John Pollak	LSA
Judith Collins	INA
Linda Hinton	ISAC
Teresa Bomhoff	IMHPC, AMOS, NAMI
Tom Cope	IA Physician Assistant Society
Zeke Farley	House Democratic Staff

Members of Judicial Workgroup were introduced as well as guests.

Review of Legislation: John Pollak

Senate File 2312 – Legislative Summary
(http://www.dhs.state.ia.us/docs/SF2312summary_072412.pdf)

Overview of Mental Health Redesign: Theresa Armstrong

Three key pieces of legislation passed:

- SF2247 Mental Retardation to Intellectual Disability
- SF2312 Judicial Bill
- SF2315 MHDS Redesign Policy Bill
    - SF2315 MHDS Redesign Policy Bill creates a regional based mental health and disabilities service system. Service delivery remains local with administration occurring at the regional level.
    - July 1, 2013 - Eligibility for non-Medicaid services will go into effect. Income eligibility is set at 150% of the federal poverty level with no co-pays or fees.
    - July 1, 2013 – legal settlement changes to count residency for MHDS.
    - July 1, 2013 - Core services go into effect.

- Regional update: four (4) counties have sent DHS their letter of intent to form a region. Counties need to notify DHS of their intent to join a region by April 1, 2013. The regions need to be developed by December 31, 2013 and fully implemented by June 30, 2014.

- A county may request a waiver to not from into a region. The MHDS staff is working on emergency rules for exemption. When complete, these will be presented to the MHDS Commission and the Administrative Rules Committee to adopt. Counties must meet the same outcomes, financial criteria and deliver the same core services as well as have performance based contracts, In addition, they must have a community mental health center or federally qualified health center with providers capable of providing mental health services or other similar services.

- Overview of Mental Health and Disability Services System Redesign Legislation
    - http://www.dhs.state.ia.us/docs/MHDSRedesignLegislationOverviewJuly242012_080312.pdf
    - Page 9 outlines the charges of the Redesign workgroups: Children, Judicial, Data and Statistical, Outcomes, Workforce, Transition and Interim Study Committee, Brain Injury and Continuum of Care.
    - Page 10 outlines financing of SF2315: Reinstates the county MHDS levy, addresses disputed billings, establishes a one-time Redesign Transition Fund, and establishes a method for equalizing the amounts of funding counties receive for non-Medicaid services.

A five year implementation plan was recommended to the legislature in its final report on December 9, 2011. (http://www.dhs.state.ia.us/docs/DHS-MHDS_SystemRedesignReportFINAL_12-09-2011.pdf). The first phases are currently being implemented.

Discussion:
Clarification was made about justice involved services in that the judicial group did recommend justice involved services, but the legislature changed them to expanded services. It is hoped that the pre-commitment screening might help in this process since a high number of mental health caseload is under the DOC.

The final report for the 2010 Judicial-DHS work group will be posted on the website, which includes recommendations some of the Chapter 229 changes. There is another document that has all of the 2010 recommendations regarding chapter 229 and this will be posted as well.

John Pollack addressed a concern regarding equal access versus equal funding as he explained that the Legislative Interim Committee will look at unintended consequences, with all parties wanting equalization. The members of the committee will not be named until after the election.

Presentation on Chapters 125, 222 and 229: Jay Stein and Gretchen Kraemer

Mental Health and substance-related disorder commitment: Jay Stein

Serious Mental Impairment – Chapter 229 SMI has to be proven every time there is a commitment. Seriously mentally impaired or serious mental impairment describes the condition of a person with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment. Due to the illness the person must meet the following criteria:

- Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.
- Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.
- Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation or death.

Magistrate Stein reviewed his document entitled "A Short Tour of Mental and Substance-related Disorder Commitment." (http://www.dhs.state.ia.us/docs/A-SHORT-TOUR-OF-MENTAL-AND-SUBSTANCE-ABUSE.pdf)

- Juvenile admission happens in Juvenile Court.
- During the pre-screening interview, the chief medical officer shall inform the minor orally and in writing that the minor has the right to object to the admission.
- Have to show no other possible treatment option is least restrictive.
- The minor has the right to an attorney and the right to be present the same as an adult.

- The respondent has a right to a second opinion which is difficult to implement.
- Emergency procedure: #1 through #7 are more problematic in smaller counties and the court and clerk's office can spend hours trying to find a bed. The CPC decides how the county dollars will be spent – minimal services suffice and the courts cannot make the people pay more.
- Co-occurring treatment approach.
- Advocates assist individuals to make sure the rights and privileges of hospitalized persons are honored.
- At the end of a 45 day period, the court could ask for another filing of 45 days for a maximum of 90 days.
- Substance-related disorder is compared with chronic illness in that there will be relapse of symptoms.
- The respondent is entitled to an attorney who can cross examine the medical doctor who makes the conclusion.
- Statute about commitment not treatment which is often one to two (1 to 2) years.

Gretchen Kraemer referenced handout titled "Chapter 125, Chapter 229 and Chapter 222" and the workgroup discussed how consolidation might look. (http://www.dhs.state.ia.us/docs/CodeComparator_072612.pdf)

In Chapter 125 – Chronic Substance Abuse:
- The Iowa Department of Public Health (IDPH) pays for treatment under Chronic Substance Abuse.
- Licensure change may be needed to recognize the difference in the professional requirements for people working in substance abuse and in mental health.
- Commitment and holding period needs to include a variety of locations not just hospital.

In Chapter 229 – Seriously Mentally Impaired:
- The question of who pays was raised.

In Chapter 222 – Intellectual Disability:
- No statement speaks to danger to self or others.
- Missing a periodic review.
- Judgment that no harm to the person upon discharge.

Discussion:
- It was suggested to combine three chapters into one chapter.
- Some felt placement of the individual would not be a barrier in combining the chapters.
- Can we review what other states have done in combining? States suggested to look at included: Ohio, New Hampshire, Massachusetts and Kansas.
- What is best way to do consolidation? Take some from each chapter or start new?
- Some believe that Chapter 222 is necessary, and some believe it can be eliminated.

- Chapter 229 core concepts are good as starting point, building other concepts in.
- Chapter 229 needs updating with Supreme Court rulings. There was a discussion regarding creating a subgroup to look at this.
- Chronic substance use does fall within the definition of mental health definition.
- Is the discharge planning based on evidence based criteria?
- Chapter 229 has good core concepts; good starting point to add Chapter 125. Chapter 229 needs new items based on Supreme Court rulings. Chapter 222 may not be needed any longer, need data and need to investigate.
- Parts of Chapter 229 could be made much more efficient with placement hearing to the same court structure.
- The intent of the Legislature is to combine three separate chapters and look at the differing language and content to see if there is a way to align them.
- There was a question regarding whether there was intent to combine the statutes, and a statement made if the chapters were not broken, there is no need to fix them. It was suggested to look back at the initial recommendations.
- Make recommendations to consolidate if appropriate and if not, leave the chapters without change.
- What is the rational for how the chapters are different? What holds true for all three?
- Mount Pleasant has the only dual diagnosis unit in Iowa.
- There is more strict confidentiality in Chapter 125.
- It would be difficult to combine into one commitment, however; commitment process could be unified. The content is different and can't be applied across the board and could be to the detriment of the population served.
- We do not need Chapter 222 if guardianship is filed; however, one cannot always locate a guardian. There are people who do this service for a fee.
- Co-occurring drives the convergence of procedures for treatment options. Doesn't think they should diverge as they have different administrative frameworks. Feels the group should look at the inter-related aspects.
- Recommendation made that a subgroup be created to meet between the meetings.

Some suggested changes:

1. Include substance induced disorder under mental health in Chapter 229.
2. Look at the three chapters and how they are different and if there is not a significant rationale for how they are different, make them the same.
3. Clean up each Chapter 125, 222 and 229.
4. Chapter 222 needs to include "dangerous". Definition: lacks sufficient judgment, danger to own health, dangerous to self and others.
5. Utilize Chapter 229 for all three chapters with the exception of serious emotional injury.
6. Chapter 222 for adults and children.

Other things to consider:

- We only need Chapter 222 for transportation. If we figure out transportation, may not need Chapter 222.

- We may need Chapter 222 in a case of a situation when the parent of an ID adult keeps them in the home for social security purposes.
- Chapter 222 could be helpful for this. Under Chapter 222, it only takes one (1) person to commit and in Chapters 229 and 125 it requires two (2) persons.
- Mental health training is needed for attorneys for any mental health commitment.
- Chapter 222 requires a finding that the child can't be given sufficient treatment in the home, does not translate to danger to self and others. Adults also fall under Chapter 222 and not just children. There could be examples of a person with an intellectual disability without danger to cause. Questions were raised on whether this refers to a minor or the adults in the household as well.
- With RCF HCBS Waiver home – the provider usually comes in under Chapter 229.

Placement hold discussion was tabled for the next workgroup meeting.

Suggested changes:

1. Include substance induced disorder under mental health Chapter 229.
2. Look at the three Chapters 125, 229 and 222 and outline how they are different, if there is not a significant rational for their differences – make them the same.
3. Clean up each Chapter 125, 229 and 222 in the process.
4. In Chapters 125 and 229 the **hearing** process is identical; the process should not be different with Chapter 222.
5. Chapter 125 allows the attorney to recommend that commitment not be ordered. Chapter 229 attorney needs to be allowed the same as in Chapter 125. In Chapter 125 the person filling out the application recommends. All three need to be the same.

Request from workgroup: The group in consensus would like more data on commitments for Chapters 222, 125 and 229.

Data provided for juvenile petitions:

- 2008: mental health = 1,529 and substance abuse = 447
- 2009: mental health = 1,574 and substance abuse = 440
- 2010: mental health = 1,136 and substance abuse = 282

Mental health and substance abuse for Chapter 222 (requested data):

- 9,000 plus filings statewide for Chapters 229 and 125
- 2008: mental health filing = 6,171 and substance abuse = 1,860
- 2009: mental health filing = 6,595 and substance abuse = 1,948
- 2010: mental health filing = 7,176 and substance abuse = 2,214
- Approximately 500 of the filings may be dual filings.

Public Comment:

Comment:	Provided a supportive statement for one law that would cover the commitments in Chapters 125, 229 and 222 due to their interconnectivity. Recognized there are silos but indicated there were examples of best practices to work from.
Comment:	Believes the intent of the legislative wording is to treat co-occurring. Doesn't feel the committee is limited to the current language in the three chapters, and there are new words and language that could be included. The statement was made that they would like to see MHI's provide co-occurring treatment.
Comment:	Indicated there are two great laws on the books that could serve as models in Iowa.
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Comment:	Laura's Law in California that allows for court-ordered assisted outpatient treatment or forced anti-psychotics in most cases. To qualify for the program, the person must have a serious mental illness plus a recent history of psychiatric hospitalizations, history of being in jail or acts, threats or attempts of serious violent behavior towards self or others. A complete outline of the legal procedures and safeguards within Laura's Law has been prepared by NAMI San Mateo.
Comment:	Kendra's Law in New York concerning involuntary outpatient commitment. It grants the judges the authority to issue orders that require people who meet certain criteria to regularly undergo psychiatric treatment. Failure to comply could result in commitment for up to 72 hours. Kendra's Law does not require that patients are forced to take medications

*Next meeting is September 6, 2012, from 10:00 am to 3:00 pm at the State Capitol, Room 103.

For more information:

Handouts and meeting information for each workgroup will be made available at: http://www.dhs.state.ia.us/Partners/MHDSRedesign.html

Website information will be updated regularly and meeting agendas, minutes, and handouts for the Redesign workgroups will be posted there.